



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:	)	
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	)	ISCR Case No. 10-06725
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Melvin A. Howry, Esquire, Department Counsel  
For Applicant: *Pro se*

February 13, 2012

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**Decision**  
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MOGUL, Martin H., Administrative Judge:

On June 15, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines B and E for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), effective after September 1, 2006.

On August 5, 2011, Applicant replied to the SOR (RSOR) in writing, and he requested a decision based on a hearing before an Administrative Judge. I received the case assignment on September 26, 2011. DOHA issued a notice of hearing on November 4, 2011, and the hearing convened as scheduled on November 29, 2011. At the hearing, the Government offered Exhibits 1 through 4, which were received without objection. Applicant testified on his own behalf and submitted Exhibits A through C, which were also admitted without objection. DOHA received the transcript of the hearing (Tr) on December 8, 2011. I granted Applicant's request to keep the record open until December 13, 2011, to submit additional documents, and several additional evidence

was received, and entered into evidence as Exhibits D and E. Based upon a review of the pleadings, exhibits, and the testimony of Applicant, eligibility for access to classified information is denied.

### **Request for Administrative Notice**

Department Counsel requested that I take administrative notice of certain facts relating to the Republic of Afghanistan (Afghanistan). The request and the attached documents were admitted into evidence as Exhibit 4. The facts administratively noticed are set out in the Findings of Fact, below.

### **Findings of Fact**

In his RSOR, Applicant admitted SOR allegations 1.a. and b., and he admitted and denied parts of 2.a. The admitted allegations are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's RSOR, the admitted documents, and the testimony of Applicant, and upon due consideration of that evidence, I make the following additional findings of fact:

Applicant is 37 years old. He is married and has three children. Applicant was born in Afghanistan in 1975, and moved to Germany in approximately 1998. He then moved to the United States in 2005, and has been a United States resident since then. He became a naturalized United States citizen in 2009. Applicant's wife was born in Afghanistan, and they met in Germany. She is now a United States resident and citizen, as are their three children. Applicant has no appreciable assets in the United States. Applicant currently retains only a United States passport. Applicant is employed as a translator and cultural role player for the United States military in the United States since 2010, and he seeks a DoD security clearance in connection with his employment in the defense sector.

### **Paragraph 1(Guideline B, Foreign Influence)**

The SOR lists two allegations regarding Foreign Influence, under Adjudicative Guideline B, and Applicant admitted both allegations in his RSOR:

1.a. Applicant admitted that his mother is a citizen and resident of Afghanistan. His father is deceased. Applicant's estimated his mother's age to be approximately 70, and she is a housewife. She has never worked for the Afghanistan Government. He speaks to his mother by telephone once a month or once every two months. (Tr at 29-33, 69-70.) In 2006, he visited Afghanistan because his sister had died. He saw his mother then. He also saw her when he went to visit Afghanistan in 2010. (Tr at 59-60.)

1.b. Applicant admitted that he has cousins and stepbrothers, who are citizens and residents of Afghanistan. At the hearing, he specified that he has two cousins and one stepbrother, who are citizens and residents of Afghanistan. Applicant saw his

stepbrother during both his 2006 and 2010 visits to Afghanistan. He saw his cousins in 2006, but he did not see them in 2010. He has extremely limited contact with his cousins. (Tr at 37-38, 61-62.)

## **Paragraph 2 (Guideline E, Personal Conduct)**

The SOR lists one allegation regarding Personal Conduct, under Adjudicative Guideline E:

2.a. Applicant executed a Security Clearance Application (SCA) on December 23, 2009. (Exhibit 1.) Question 20B 6. of the SCA asks, "Have you EVER held or do you now hold a passport that was issued by a foreign government?" Applicant answered, "No" to this question and the SOR alleges that Applicant deliberately failed to disclose that he had possessed an Afghanistan passport that expired in about November 2007. In his RSOR, Applicant admitted that he answered, "No" to the question, but he alleged that he did not deliberately answer the question falsely. Rather he claimed to have misunderstood the question.

At the hearing, Applicant testified that he had applied for and received an Afghanistan passport in 2005, which expired in 2006. Applicant had shredded it, and he had no intention of renewing or reapplying for it, which was why he answered no to the question. He claimed that he never meant to mislead the Government; he simply misunderstood the question, and believed that he since he did not hold a foreign passport at the time he completed the SCA, the correct answer was no. (Tr at 38-43, 50-51.) I find that based on his difficulty with the English language, as exhibited during the hearing, it is not unreasonable to believe that he was confused by this question.

## **Mitigation**

Applicant submitted three positive character letters, one from his supervisor, one from a co-worker, and the third from a friend. (Exhibit E.) He was described by his supervisor as "organized, efficient, extremely competent, and has excellent rapport with people of all ages." His friend described Applicant as "patient, fair-minded, honest and trustworthy."

Applicant also submitted eight Certificates of Achievement and Appreciation that he had received for his excellent work for the United States military. (Exhibit D.)

## **Current Status of Afghanistan**

Afghanistan has been an independent nation since August 1919, after the British relinquished control. A monarchy ruled from 1919 until a military coup in 1973. Following a Soviet supported coup in 1978 a Marxist government emerged. In 1979, Soviet forces invaded and occupied Afghanistan, and the Soviets withdrew in 1989. After the withdrawal a civil war continued, and in the mid 1990s the Taliban rose to power. The Taliban committed massive human rights violations and provided sanctuary to Osama Bin-Laden and Al Quaida. After the September 11, 2001 terrorist attacks the United

States forces and a coalition commenced military operations in October 2001, and forced the Taliban out of power and a new democratic government was installed in 2004.

Afghanistan's human rights record has remained poor, and the Afghan-Taliban dominated insurgency has become increasingly frequent, sophisticated, and destabilizing. Overall, the State Department has declared that the security threat to all American citizens in Afghanistan remains critical as no part of Afghanistan is immune from violence.

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or

safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline B, Foreign Influence**

AG ¶ 6 expresses the security concern regarding Foreign Influence:

Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U.S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, including, but not limited to, such considerations as whether the foreign country is known to target United States citizens to obtain protected information and/or is associated with a risk of terrorism.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. Those that could be applicable in this case include the following: AG ¶ 7 (a) “contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion.” Applicant’s mother, stepbrother, and cousins, who are citizens and residents of Afghanistan make AG ¶ 7(a) a concern to the Government. I find that AG ¶ 7(b) “connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual’s obligation to protect sensitive information . . . and the individual’s desire to help a foreign person, group, or country by providing that information,” is also potentially applicable in this case.

AG ¶ 8 provides conditions that could mitigate security concerns. I cannot find that AG ¶ 8(b) “there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest,” is applicable to this Applicant and controlling for the following reasons:

Applicant has only lived in the United States since 2005, and he only became a naturalized United States citizen in 2009. While Applicant’s wife and three children are

United States citizens and residents, Applicant still has a significant relationship with his mother and stepbrother, who are citizens and residents in Afghanistan, and whom he visited in Afghanistan in 2006 and 2010. Applicant has no appreciable assets in the United States. Based on all of these reasons, I conclude Guideline B against Applicant.

### **Guideline E, Personal Conduct**

With respect to Guideline E, I find it credible that Applicant did not understand the question correctly, but rather he assumed that since his foreign passport had long since expired and been shredded, that he was not supposed to list it on the SCA. I do not find that he intended to mislead the Government.

In reviewing the disqualifying conditions under Guideline E, I conclude that there was no “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire” by Applicant. Therefore, I find that ¶ 16 (a) does not apply, nor does any other disqualifying condition apply against Applicant. I resolve Guideline E for Applicant

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant’s eligibility for a security clearance by considering the totality of the applicant’s conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual’s age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2 (c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Based on all of the reasons cited above as to why mitigating Condition AG ¶ 8(b) does not apply, I find that the record evidence leaves me with significant questions and doubts as to Applicant’s eligibility and suitability for a security clearance under the whole-person concept. For all these reasons, I conclude Applicant has not mitigated the security concerns.

## **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a. and 1.b.:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a.:	For Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Martin H. Mogul  
Administrative Judge